which were conveyed by the said William Robinson to the said Arabella Patterson, by deed of the 1st August, 1848, recorded in vol. 81, page 599, in consideration in part of the judgment aforesaid.

In the District Court for the City of Philadelphia.

FRITZ *vs.* FISHER.

1. A judgment of one court will not be enforced by another, unless it is certain in itself, or is capable of being made so by intendment or presumption.
2. It *seems*, that a defence to the judgment of another State on the ground of want of notice should be pleaded; and that when it is not, the judgment will not be held invalid, merely because the record fails to show that notice was given.

The opinion of the Court was delivered by

HARE, J.—This is an action of debt against Fisher & Smith, founded on a judgment rendered by a justice of the peace in New Jersey.[1] The judgment as produced and proved in this

[1] (COPY OF RECORD.)

State of New Jersey, Camden county, ss.

In the Court for the trial of small causes, before Joseph B. Strafford, Esq., Justice.

Andrew Fritz, plaintiff, *vs.* Henry Fisher and George A. Link, defendant.	In trespass on the case, damage $100.

May 25, 1853. Issued a summons in the above case, returnable before me on Wednesday, the 1st day of June next, at 2 o'clock, P. M. Constable returned the same, as follows: "Served the within May 25, 1853, on the said Henry Fisher, by reading it to him, a copy not required. C. H. Gordon, Constable."

June 1, 1853. Counsel for both parties sent me a note, requesting a postponement for two weeks, with an arrangement that plaintiff should then have the privilege of filing his state of demand; whereupon I adjourned the trial until the 15th inst. at 4 o'clock in the afternoon.

June 15, 1853. Parties appeared. Plaintiff filed his state of demand. Trial

court is against "defendants," but the record shows that Smith was the only person served with process, or who appeared in or defended the action. Fisher, consequently, contended at the trial, that the judgment as against him was a nullity; that the proof did not sustain the declaration, and that the plaintiff must fail on account of the variance. The point was reserved and is now before us for decision, and we have also to render judgment on a plea of nul tiel record, which raises nearly the same question.

All judgments derive their force from the powers conferred by the State, on the courts which render them, and are therefore necessarily void when those powers are exceeded. This principle applies equally to the highest tribunals of Westminster Hall, or our own country, and to the pettiest magistrate or most inferior court. A criminal information in the Common Pleas, a common recovery in the Queen's Bench, an action of ejectment in the high Court of Chancery, would be all so much waste paper, and could not be pleaded or given in evidence as a justification, in an action of trespass against the sheriff, or any other officer of those courts, who should act upon them, even in obedience to the commands of his superiors. This was settled as far back as the case of the Marshalsea, 10 Coke, 68–76, and has never since been questioned. If, says Lord Coke, citing and relying on the language of the court in the case of *Bower* vs. *Collins*, in the 22 Edward, 4, 33, b, "the court has not power and authority, then their proceeding is coram non judice: as if the Court of Common Pleas hold plea in an appeal of death, or robbery, or any other appeal, and the defendant is attainted, it

proceeded. Dudley, counsel for plaintiff. Dayton, for defendant. William Small, Lewis Yeager, Lewis Holtzworth, Restore Cook and David Brinnersholtz, were sworn as witnesses on part of plaintiff. Plaintiff also offered a transcript from Justice Curts' docket, and several receipts from defendants to plaintiff, in evidence, which were received. After hearing the witnesses and the parties, I gave judgment in favor of the plaintiff against the defendants for one hundred dollars damages, and two dollars and twenty-seven cents costs.

I do hereby certify the above to be a true transcript from my docket, in the case as therein named. Witness my hand and seal at Camden city, in said county, this sixteenth day of November, A. D. eighteen hundred and fifty-three.

[SEAL] JOSEPH B. STRAFFORD, J. P.

is coram non judice: quod omnes concesserunt." Jurisdiction is presumed, said Parke, B., in delivering the judgment of the Exchequer Chamber in the case of *Gossett* vs. *Howard*, 10 Q. B. 359–543, "with respect to such writs as are actually issued by superior courts, that they are duly issued, and in a case in which they have jurisdiction, unless the contrary appears on the face of them, as it would, for instance, if a writ of capias for a criminal matter issued from the Common Pleas, or a writ on a real action from the King's Bench, or a real action not in the Crown's case from the Exchequer; in all of which cases the want of jurisdiction would appear." When, therefore, a court has no jurisdiction over the subject-matter of a cause, its judgment is void, and must be treated as such in every subsequent proceeding in which it is brought in question. But while the law thus strikes all judicial proceedings, which exceed their proper limits with utter inability, it makes certain presumptions in their favor, which experience has shown to be essential to the repose and safety of society. Thus, superior courts are presumed to exercise the powers committed to them properly, and their judgments will be held to be within their jurisdiction, unless the contrary appears on the face of the record, or upon a mere comparison of the subject-matter of the judgment, with the authority of the court. It is not necessary that the record should show jurisdiction, it will be enough if it do not directly or by a necessary implication negative its existence. This, indeed, is a mere application of the general maxim *omnia rite acta*, which has a wide and beneficial influence, not only in law, but in all the walks of life. But while it is universally conceded, that the record of a superior court need not show that its powers have been duly exercised over the subject-matter of the cause, there has been a wide difference of opinion in this country, whether the same rule applies to its jurisdiction over the persons of the parties, and whether a judgment can be valid, unless the proceedings on which it is based show, that the defendant was duly notified of their existence, or made himself amenable to the authority of the court, by a voluntary appearance. I say in this country, for I am ignorant of the existence of any case in England, which justifies the inference, that a domestic judgment

of a superior court can be impeached collaterally, on the ground that the defendant was not served with process; or that a plea of *nul tiel record* to an action of debt on a judgment of the Common Pleas or Exchequer could be sustained, by pointing out the want of all proof other than the judgment itself, that the defendant was before the court when it was rendered. In thus using the phrase other than the judgment, I wish to call attention to the natural presumption, that the court would not have rendered it without giving the defendant a day in court, on which he might answer the complaint made against him. It is admitted that the return of service by the sheriff, or the entry of appearance by the clerk cannot be controverted, and will be presumed to be right, in face of the most conclusive proof to the contrary; and it would seem that as much faith should be given to the acts of the court, as to the allegations of its officers. It was accordingly held by the Supreme Court of New York, in *Foot* vs. *Stevens*, 17 Wend. 483, and *Hart* vs. *Seixas*, 21 Id., 40, that a judgment cannot be impeached or set aside collaterally, for the failure of the record to show that the defendant had notice, or waived it by a voluntary appearance. Nor does this view of the law, leave the parties who have been injured by a judgment rendered without notice, without the means of redress, for they may either set it aside by an application to the court itself, or reverse it by a writ of error; it merely deprives them of the right to rely on the defect in a collateral proceeding, in which the truth of the case cannot be known, or what may be a mere clerical error corrected.

The principles which have been stated, as sustaining domestic judgments, seem to apply equally to those of other States. The same faith and credit which we give to our own records, are due to those of all the parts of that great whole which we call our country. So long as nothing is alleged, or shown to the contrary, their decisions must be presumed to have been guided by the same rules of justice which dictate our own; and even when this does not appear on the face of the record, the defect should be supplied by a favorable intendment. The defendant may indeed negative the presumption by pleading and proof; he may show that the court which has

assumed to bind him, had no authority over his person, and he may do this not only when the record is silent, but in opposition to its explicit entries or allegations; but if, instead of adopting this course, he confine himself to a plea of nul tiel record, and thus shut the plaintiff out from sustaining the record by extrinsic evidence, the judgment itself should be sufficient proof of its own validity.

But while the judgments of Superior Courts ought thus to be regarded as binding, not only in the state in which they are rendered, but elsewhere, until the contrary appears, a different rule seems to prevail with regard to the judgments of inferior courts. As the powers under which such courts act are limited, their acts will be void unless manifestly within the scope of their powers. No presumption can be made in favor of their jurisdiction; it must actually appear on the face of their proceedings. This, however, is only true as it regards their jurisdiction; for if that be proved or conceded, their acts will receive the same favorable construction as those of superior courts. In other words, if the power of the court to act, be once shown, it will be presumed to have been properly exercised. The principle is plain, but its application to the question, whether the record must show that notice was given to the parties, is not a little difficult. It may be said that as the power to give notice cannot be denied, the presumption ought to be that it has been duly exerted. On the other hand, if notice be an indispensable preliminary, without which the court can exercise no jurisdiction over the parties, and, therefore, cannot bind them by its decision, the failure to set it forth on the face of the proceedings will be a fatal defect, and may be relied on as such, in any collateral suit, in which they are pleaded or given in evidence, either as a defence or cause of action. The English cases are full and explicit to the point, that notice is indispensably necessary to give validity to the acts of inferior tribunals, and that proof of the want of notice will render their judgments nullities; *Bagg's case*, 11 Reports, 93 b., 99 a.; *Dr. Bentley's case*, 1 Strange, 537; *Rex* vs. *Benn*, 6 Term, 198; *Capel* vs. *Child*, 2 C. & J., 555; *Painter* vs. *The Liverpool Gas Company*, 3 A. & E., 433; *Ex parte Kenning*, 10 Q. B. 750; 4 C. B., 507, but are far from being equally explicit, with regard to

the effect of the failure of the record to show that it has been given. In *Rex* vs. *Venables*, 2 Lord Raymond, 1405, 1 Strange, 630, the King's Bench sustained a commitment by two justices, notwithstanding the objection that the defendant had not appeared or been summoned, and that it was contrary to natural justice to condemn any one without giving him an opportunity of being heard; but afterwards issued a criminal information against the justices, on affidavits that they had proceeded without notice to the parties interested. A similar point arose in *Rex* vs. *Clay*, 1 Strange, 475, where Pratt, C. J., contended, that an order of bastardy was void, in consequence of the failure of the record to show that the defendant had been summoned, because it was the act of an inferior court, and no presumption could be made in its favor, but the *puisne* judges expressed a decided opinion the other way, on the ground that as the power to issue the summons was unquestionable, it must be presumed to have been duly exercised; and Pratt seems to have yielded to their arguments, for the order was subsequently confirmed without opposition. These cases, taken in connection with those already cited, would seem to show, that while the want of notice is fatal, its existence will be presumed, unless the contrary is apparent on the face of the proceedings, or is shown by extrinsic evidence. But whatever the rule may be in England, the American decisions establish by a great preponderance of authority, that notice is necessary to give jurisdiction over the persons of the parties, and that a failure to set it forth in the proceedings of inferior courts, will render them void on the general principle, that the jurisdiction of such courts cannot be presumed, and must appear affirmatively in every essential particular.

These principles might suffice for the solution of the question now before us, if it related to the record of a court of this state. We should then know the nature and extent of the powers of the court, and could determine whether the want of proof of notice could be supplied by presumption. But the question is as to the validity of the judgment of another state, to which we owe the same faith and credit which it would and ought to have in the state in which it was rendered. Had the defendant pleaded that the judgment was invalid in New Jersey, and then given the law of that state in evi-

dence, he would probably have succeeded in sustaining the plea, for the case of *Hess* vs. *Coles*, 3 New Jersey, 116, seems to decide, that the failure of the record to show that notice was given, renders all judgments void. But as the defendant has rested his case solely on the point, whether there is such a judgment as the plaintiff has averred, we must rest our decision on general principles, without any special reference to the law of New Jersey. We have before us the solemn and official act of one of her magistrates, done in the discharge of his public duty, and we are bound to presume, not only, that he acted in pursuance of a power conferred by law, but that he duly exercised the power under which he acted. The sovereign authority which resides in every state, may bind its subjects and citizens by laws, and may not only enforce these laws through the medium of its tribunals, but may prescribe the mode in which those tribunals shall exercise the powers confided to their charge. It may dispense with notice altogether, or make publication a substitute for notice; and may certainly direct that proof of notice shall, or may be made otherwise, than by an entry in the minutes or record of the tribunal. Such a law would unquestionably be obligatory on every one domiciled within the boundaries of the state which enacted it, unless contrary to some constitutional prohibition. Whether a judgment, rendered in accordance with its provisions, would be enforced by the courts of a foreign government, or of a sister state, would depend on a variety of considerations. It might certainly, as in the case of judgments in proceedings commenced by attachment, bind and pass rights of property, even if it imposed no personal obligation; and it would probably be personally obligatory upon a citizen of the state in which it was rendered, unless it contravened some principle of natural justice, or some constitutional restriction. It would therefore seem that no court can be entitled to pronounce definitively, that the sentence of a foreign tribunal, or of a sister state, is void, merely because the record fails to show that notice was given. Whether notice was given or not, and whether the failure to give it renders the judgment invalid, are questions which should be raised by proper pleading. That the judgment of another state is invalid, for want of compliance with the

laws which conferred judicial authority upon the court, and prescribed the mode in which it should be exercised; that those laws are void or unconstitutional; that the defendant is a citizen of another state, and not bound by the judgment as an adjudication, for want of notice, nor as an act of the sovereign power of the state in which it was rendered, because not subject to its authority, may be, and no doubt are good defences to an action founded on the judgment. But unless the defendant himself sets up such a defence, no court can raise it for him. This would be too plain for argument if the objection were to the jurisdiction of the court over the cause, and is equally true when the question is as to its authority over the parties. A judgment of the Orphan's Court of this county, in an action of covenant, or a decree of this court surcharging an executor or administrator, would be a mere nullity, and would be unhesitatingly treated as such in any court of this state, and yet an action founded upon such a decree or judgment, in another state, could only be resisted by pleading the want of jurisdiction, and giving the laws of this state in evidence, in support of the plea.

It is true, that the 1st section of the 4th article of the Constitution of the United States, and the act of May 26th, 1790, passed by Congress, in pursuance of that section, make it the duty of the courts of each state, to give such effect to the records and judicial proceedings of other states, as they have by law or usage in the courts of the state where they had their origin. And it may be contended, that as the imposition of this duty, must confer the power necessary for its fulfilment, the judges of one state may take judicial cognizance of the laws of another, so far as may be necessary to ascertain the effect due to its judgments. But the difficulties attendant on an attempt, by a court, to expound a system of law, to which it is more or less a stranger, without the aid of specific information, verified, when necessary, by oath, are so great, that the safer course would seem to be, to adhere to the general rule of comity, which holds every judicial act of foreign tribunals binding, until some sufficient cause is shown to the contrary, in such a form as to permit evidence to be given to sustain or disprove its truth. When, indeed, the record shows affirmatively, or by a necessary intend-

ment, that the defendant was not subject to the jurisdiction of the court, whose decision is produced against him, the case may be different, for then the judgment is a nullity on its face, which can hardly be alleged, when there is no other ground for inferring a want of jurisdiction, than the absence of entries going to prove it. Had, therefore, the judgment in this case been a judgment explicitly against both defendants, in terms to put it beyond all doubt, that the magistrate, who rendered it, meant to charge both personally, we should probably have held it binding, even on the one who may not have been amenable to the authority of the tribunal from which it emanated, but who has failed to present the objection in such a form as to make it available. But all we have in the transcript of the record, now before us, to show that Fisher was meant to be included in the decision against his co-defendant, Smith, is an entry of judgment against "*defendants.*" All the previous proceedings, from the institution of the suit down to the time of this entry, are against Smith only. He is the only person served, the only person who appears to defend or contest the cause. Would it be reasonable, under these circumstances, to charge the other defendant, Fisher, without some better authority than a single "*s*" to show that he was included in the decision, without anything to show what was the nature or extent of the obligation imposed upon him. The plural may have been used instead of the singular, in giving the judgment, to make it accord with the writ; the laws of New Jersey may not permit, the magistrate may not have designed it to bind both the defendants personally. The common law held all obligations void, unless they were certain, or capable of being made so, and applied this rule quite as rigorously to judgments as to other things, as may easily be seen by a recurrence to the precedents. When a defendant has been served with process, or has appeared without service, it is reasonable to presume that a subsequent general judgment, is a judgment against him, for that which is not certain on the face of the judgment, becomes so, on looking at the previous proceedings. But to hold that a judgment shall bind a man, who is not named in it, and who does not appear to have been before the court when it was rendered, merely be-

cause it is in the plural number and not in the singular, would be pushing inference to a dangerous extent, and further than we are disposed to carry it. The rule for a new trial is consequently discharged, and judgment entered for the defendants, on the plea of *nul tiel record*, and on the point reserved.

LEGAL MISCELLANY.

LEGAL PRINCIPLES.

No. III.

In our last number, we saw that in the law, as in mathematical science, one common result may frequently be deduced by different, independent processes of reasoning. Now we may further observe, that as no two correct mathematical processes will lead to opposite or conflicting conclusions, so will no two legal ones. A remembrance of this truth will always be of great service in testing the correctness of proposed legal principles.

Thus, one means by which we ascertain what is the law, is to consult that natural sense of right and justice which the Maker of us all has placed in the human mind. If there is proposed to us a legal principle, which we discover will legitimately lead to what the common understanding of mankind deems unjust, we conclude that the principle cannot and does not belong to the law. If, on the other hand, it uniformly conducts to what is just, we at once decide that it ought to be a part of our law, and set about seeing whether it really is so.

Now to establish, not merely that it ought to be, but in fact is, a principle of the law, we are not obliged to find any adjudication in which the judges have mentioned it as such, or adopted a course of argument from which we can infer so much as that it even occurred to their minds. So, on the other hand, if a judge, in a case which we know to have been correctly decided, has distinctly laid it down as a principle of the law, that does not necessarily establish it as such, though it may go far as evidence to our minds that it is. Courts